IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.7.2007

CORAM

THE HON'BLE MR.JUSTICE P.JYOTHIMANI

Writ Petition No.14605 of 2000

K.Subramani .. Petitioner

Vs.

1. The Joint Director of School Education
   Higher Secondary
   College Road, Madras 600 006.

2. The Chief Educational Officer
   Dindigul.

3. The District Educational Officer
   Palani.

4. Guruvappa Higher Secondary School
   rep. by Secretary
   Neikarapatti, Palani Taluk
   Dindigul District. .. Respondent

Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus for the relief as stated therein.

For Petitioner : Mr.D.Krishnakumar
For Respondents 1 to 3: Mr.A.Vijayakumar
Government Advocate (Edn.)
For Respondent No. 4: Mr. S. Saravanan

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O R D E R

The writ petition is filed challenging the order of the second respondent dated 19.12.1996 and also the consequential order of the third respondent dated 22.3.1997, apart from the order of the first respondent dated 19.6.2000.

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2.1. The petitioner has completed his M.Sc. Degree in Chemistry and also completed M.Ed Degree and fully qualified for appointment to the post of Post Graduate Teacher in higher secondary school. He has also registered his name in the Employment Exchange in the year 1990. In the year 1995, a vacancy has arisen in the fourth respondent school due to the resignation of one Prabakaran, who was working as Chemistry Teacher. The said Prabakaran is stated to have been relieved from the fourth respondent school on 22.8.1995 and got appointed in the Government Higher Secondary School.

2.2. On receipt of the communication from the fourth respondent that his name has been forwarded by the Employment Exchange for the post of a Teacher in Chemistry, the petitioner has appeared for an interview on 19.9.1995 and thereafter, he was selected and joined duty on 20.9.1995 as per the appointment order issued by the fourth respondent, an aided non minority school governed by the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (in short 'the Act') and Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 (in short 'the Rules').

2.3. The fourth respondent appears to have sent communication to the third respondent, viz. District Educational Officer for approving the appointment of the petitioner as Chemistry Teacher in their school from 20.9.1995. The third respondent appears to have directed the fourth respondent to get permission from the second respondent regarding the relieving of the previous teacher Prabakaran as Chemistry Teacher. It appears that the fourth respondent has informed the third respondent that the said Prabakaran has been relieved from 22.8.1995.

2.4. The fourth respondent, by representation dated 28.8.1995, sought permission of the second respondent for relieving the said Prabakaran from the date actually he was relieved, viz. 22.8.1995. The second respondent, in the communication dated 15.2.1996 informed the fourth respondent that the said Prabakaran was deemed to have been relieved from service with effect from 22.8.1995.

2.5. That apart, the fourth respondent also sought permission of the second respondent for appointing Chemistry Teacher in the vacancy caused by relieving of the said Prabakaran. But, the second respondent, by the impugned proceedings dated 19.12.1996, permitted the fourth respondent to fill up the vacancy of the Chemistry Teacher with effect from the said date of that order, viz. 19.12.1996.

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2.6. Aggrieved by the said order, the petitioner has filed an appeal before the first respondent on 29.9.1999 to grant approval to his appointment from 20.9.1995. Ultimately, the third respondent, by order dated 22.3.1997, has approved the appointment of the petitioner as Chemistry Teacher in the fourth respondent school with effect from 19.12.1996.

2.7. The petitioner challenges the said impugned order mainly on the ground that when the previous incumbent viz. Prabakaran, Chemistry Teacher, has resigned from the fourth respondent school on 22.8.1995 and was relieved immediately and he was appointed in the said place, which is within the sanctioned strength, on 20.9.1995, he is entitled for approval of his appointment from the said date.

3. According to the learned counsel for the petitioner, even assuming that the resignation of the previous incumbent, viz. Prabakaran was accepted by the competent authority under the Rules, his resignation was approved by the authority on 15.2.1996 itself and therefore, the petitioner's appointment ought to have been approved from 15.2.1996, viz. the date when the resignation of the previous incumbent was accepted by the competent authority as per the Rules.

4.1. On the other hand, the learned Government Advocate would submit that the very appointment of the petitioner is against the provisions of the Rules. He would contend that when Prabakaran has resigned by his letter of resignation dated 22.8.1995, as per Rule 17A(4) of the Rules, certain procedure ought to be followed and ultimately only after the authority confirming that the resignation of the concerned teacher was made voluntarily, the order of approval of resignation will be passed by the competent authority. Therefore, even if a teacher resigns on an earlier date, the resignation will be effective from the date approval by the competent authority, as per Rule 15(4) of the Act.

4.2. In the present case, even though the resignation of the previous incumbent was approved by the authorities on 15.2.1996, there is absolutely no basis to say that the petitioner's appointment should be approved from the date of his original appointment viz. 20.9.1995. He would also submit that as per Rule 15(4) of the Rules, the fourth respondent has resorted to appoint the petitioner, who is not a teacher working in the same school or a non teaching staff in the same school, and it is deemed to be an appointment by way of direct recruitment and prior permission has to be obtained for such appointment. However, the fourth respondent has not taken any step for

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obtaining permission for appointing the petitioner, as per the Rules. Therefore, the appointment of the petitioner itself is not valid in law. To substantiate the above contention, he relied upon the decision in The Secretary, Saliar Mahajana Higher Secondary Schools v. G.Subburaj [2005 (1) CTC 8].

5. I have heard the learned counsel for petitioner as well as the learned Government Advocate and perused the records.

6.1. It is not in dispute that the previous incumbent Prabakaran, who was a Teacher in Chemistry in the fourth respondent school, had submitted his resignation on 22.8.1995 and the same would be operative as per law only from the date of approval by the educational authorities. In the present case, the resignation of the said Prabakaran was approved on 15.2.1996.

6.2. The procedure to be followed in respect of granting approval for such resignation is contemplated under Rule 17A(4) of the Rules, which reads as follows:

> 17A.-Educational agencies not to obtain compulsorily resignation letter either at the time of appointment or subsequently from the employees in their school.
>
> (1)...
> (2)...
> (3)...
>
> (4) No teacher or other person employed in a private school shall be relieved from service on the strength of resignation letter. The resignation letter shall, on receipt, be sent to the Chief Educational Officer concerned in respect of teacher and other persons employed in High Schools, Higher Secondary Schools and Teachers' Training Institutes and to the District Educational Officer concerned in respect of teacher and other person employed in a Pre-primary, Primary and Middle Schools. The Chief Educational Officer or District Educational Officer concerned shall, in turn, get the confirmation of the teacher or other person employed, as the case may be, as to the fact of such resignation and then accord his approval to relieve the teacher or other person employed, as the case may be, from service.
> ..."

6.3. In the instant case, the time taken by the authorities, as contemplated under the Rules, from 22.8.1995 to 15.2.1996 cannot be taken advantage by the petitioner. Therefore, it is not correct for the petitioner to state that his appointment should be approved from 22.8.1995. As per the construction of

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the said rule, the vacancy in the fourth respondent school is deemed to have occurred only on the date of approval viz. 15.2.1996 and it cannot be presumed that the appointment of the petitioner was made even before the said vacancy arose.

6.4. It is true that the Rule 15(4) contemplates promotions and appointments in respect of various teachers under the aided private schools. The Rule states that in cases of vacancy which may arise in an aided private school, such vacancy has to be filled up in the following manner:

(i) from among the qualified teachers in the same school;

(ii) if such qualified teachers are not available in the same school, from any other person who is employed in the same school who is qualified to be appointed as a teacher;

(iii) if above said two categories of candidates are not available, the appointments can be made from the teachers from any other school, which means that those teachers who are declared surplus by the Government; and

(iv) in the absence of said third category, it is open to the school to go for direct recruitment.

It also contemplates that the appointment in respect of categories (iii) and (iv), viz. appointment of teachers from other schools and direct recruitment, shall be made by the School Committee only after obtaining prior permission of the competent authorities as per the Rules.

6.5. Rule 15(4) of the Rules reads as under:

Qualifications, conditions of service of teachers and other persons.-

...

(4)(i) Promotion shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.

(ii) appointments to the various categories of teachers shall be made by the following methods:-

(i) Promotion from among the qualified teachers in that school.

(ii) If no qualified and suitable candidate is available by method (i) above,-

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(a) Appointment of other persons employed in that school, provided they are fully qualified to hold the post of teachers;

(b) Appointment of teachers from any other school;

(c) Direct recruitment.

In the case of appointment from any other school or by direct recruitment, the school committee shall obtain the prior permission of the District Educational Officer in respect of Pre-primary, Primary and Middle School and that of the Chief Educational Officer in respect of High Schools and Higher Secondary Schools, Teachers' Training Institutions setting out the reasons for such appointment. In respect of corporate body running more than one school, the schools under that body shall be treated as one unit for purpose of this rule.

..."

6.6. While considering the provisions of the said Rule, a Division Bench in The Secretary, Saliar Mahajana Higher Secondary Schools v. G.Subburaj [2005 (1) CTC 8], has clearly held that any appointment made in violation of Rule 15(4) will make such appointment invalid in the eye of law. The operative portion of the judgment of the factual situation of the said case reads as follows:

"A perusal of the above Rule shows that appointment of outsiders can only be made if no qualified and suitable internal teacher is available. In other words, sub-clause (ii) of Rule 15(4) will only apply when no teacher falling in the category of sub-clause (i) of Rule 15(4) is available. It is undisputed that there were teachers available as specified in sub-clause (i) of Rule 15(4) i.e. internal candidates. Hence the appointment of the first respondent who was an outsider was clearly illegal. It was rightly set aside by the Joint Director of School Education by order dated 17.12.2001 and that order has been rightly confirmed by the learned single Judge. Admittedly, during the period when the first respondent was working i.e. from 11.8.1997 to October 2004, he has been paid a consolidated salary of Rs.1050/- p.m. (later enhanced to Rs.1,250/- p.m.) from the donations received by the Management. The learned single Judge has directed that the first respondent should be paid salary of a regular

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teacher for the period for which he had worked i.e. from 11.8.1997. We are of the opinion that this direction of the learned single Judge for payment of salary as a regular teacher for the period for which the first respondent worked, cannot be sustained. Admittedly, the first respondent was not a legally appointed teacher. He had been appointed illegally in violation of Rule 15(4) of the Rules. Hence, we cannot see how he can be granted salary of a regular teacher."

6.7. Applying the judgment of the Division Bench cited above to the instant case, I find there is substance in the contention of the learned Government Advocate about the validity of the appointment of the petitioner. However, since the educational authorities themselves have approved the appointment of the petitioner by the impugned order dated 22.3.1997 with effect from 19.12.1996, I do not think that this is a fit case to consider about the validity or otherwise of the petitioner's appointment, by applying the judgment of the Division Bench cited supra. Further, in view of the categoric stand taken by the respondents that the petitioner's appointment in the fourth respondent school as a Chemistry Teacher stands approved with effect from 19.12.1996, I am of the view that impugned order does not require to be interfered with.

7.1. However, Mr.Krishna Kumar, learned counsel for the petitioner would contend that even taking into consideration that the vacancy in the fourth respondent school has legally arisen on 15.2.1996, granting approval to the appointment of the petitioner with effect from 19.12.1996 is an error, which, according to him, may be a technical error also.

7.2. As narrated above, as per Rule 17A, on the date of approval of resignation of the previous incumbent Prabakaran, viz. 15.2.1996, there is certainly a vacancy in the fourth respondent school and in such event, there is no bar for the fourth respondent to fill up the said vacancy in accordance with the provisions of Rule 15. In the present case, inasmuch as the educational authorities have approved the appointment with effect from 19.12.1996, I am of the view that while upholding the validity of the impugned order, the petitioner and the fourth respondent must be permitted to make a representation to the educational authorities, viz. 1 to 3 bringing out the peculiar situation viz. the vacancy has arisen in law on 15.2.1996 itself, but the approval has been given on 19.2.1996 only, while the fact remains that the application for approval was made even before 15.12.1996. If any such representation is made by the petitioner and the fourth respondent, it is open to respondents 1 to 3 to consider the same in accordance with law and pass appropriate orders.

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The writ petition is disposed of in the above terms.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Joint Director of School Education
   Higher Secondary
   College Road, Madras 600 006.

2. The Chief Educational Officer
   Dindigul.

3. The District Educational Officer
   Palani.

+ one cc to Mr. D. Krishnakumar, Advocate sr no. 43799
+ one cc to the Government Pleader sr no. 43693

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nm(26.07.07)

W.P.No.14605 of 2000.

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